

THE KERALA RIGHT TO INFORMATION BILL, 2002
&
THE KERALA TRANSPARENCY IN PUBLIC PURCHASE
BILL, 2002

Background Note

There is a lot of information regarding Government and its working which the people are entitled to get as a matter of course. These relate to Statutes and Rules, Government orders, Circulars, Public Reports etc. But the fact is that they are hardly available for reference to the ordinary people. Modern technology makes dissemination of such information easy. With the establishment of computerised systems in most departments under the programme for E-governance, it is hoped that general information of the kind mentioned above would be freely available to the public.

In recent years, there has been increasing concern about transparency in the working of Government in the context of responsive administration and accountability. Transparency implies that a decision is taken on announced norms and criteria, based on principles of fairness and equity and such decision making is made visible to those concerned. It has been pointed out that while even routine information is not available as freely as it was some years ago and enquiry reports and study reports in the preparation of which large sums of money have been spent are seldom published in time for public information, the citizen has absolutely no means of knowing how a Government decision is arrived at.

It is in this context that the concept of openness in Government has been widely discussed. It has been pointed out that the constitutional provisions on fundamental rights – right of free speech and expression under Article 19 (1) (a) imply that the right to information or the right to know is a fundamental right.

In accordance with the growing concept of increasing openness in Government a Bill on Right to Information has been introduced in Parliament. Some States have also passed Right to Information Laws. There are reports that the working has not been all that satisfactory.

‘Public purchases’ is an important area in which question of transparency arises frequently. Public purchases are carried out by government departments, local government institutions, public Boards and other Corporations by following certain procedures laid down in

the rules. The said rules do not contain any provision to disclose to those concerned the procedures followed, criteria adopted in arriving at the decisions and the detailed results of the decisions. In the case of many purchases there are ill-informed and mis-informed reports in the media, leading to allegations and counter-allegations and delays in decision making.

The Committee has considered the question in all aspects. While a change in mindset is essential for ensuring transparency in Government, legislation could give citizens the right to seek and get information in terms of provisions of the law.

The Committee proposes two draft Bills one on the right to information to citizens in relation to all government matters and the other for ensuring transparency in public purchases. The two draft Bills are appended.

THE KERALA RIGHT TO INFORMATION BILL, 2002

A BILL

to provide for right of access to information to the citizens and in relation to the matters connected therewith or incidental thereto.

Preamble. - **WHEREAS**, right to Government held information is accepted by the Supreme Court as a part of right to speech and expression guaranteed to citizens in the Constitution;

AND WHEREAS, providing right of access to information to the citizens of the State promotes openness, transparency and accountability in administration and ensures effective participation of people in the administration and thus makes democracy meaningful;

AND WHEREAS, it is necessary that every Governmental action should be transparent to the public;

AND WHEREAS to achieve this object, every citizen should be able to get information from the Government;

BE it enacted in the Fifty-third Year of the Republic of India as follows: -

1. **Short title and commencement.** – (1) This Act may be called the Kerala Right to Information Act, 2002.

(2). It shall come into force from such date, as the Government may by notification, appoint and different dates may be appointed for different provisions of this Act.

2. **Definition.** – In this Act, unless the context otherwise requires,-

(a)"competent authority" means any authority, officer or person as may be notified by the Government for the purposes of this Act;

(b) "information" means information relating of any matter in respect of the affairs of the administration or decisions of a public authority;

(c)"Local Self Government Institutions" means a Panchayat constitute under the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under the Kerala Municipality Act, 1994, (20 of 1994);

(d)"public authority" means, -

(i) all offices of the State Government;

(ii) all authorities constituted by or under any Act of the State Legislature for the time being in force, a company, Corporation, trust, society, any statutory or other authority, co-operative society or any organisation or body funded, owned or controlled by the State Government, but does not include,-

- (i) offices of the Central Government;
 - (ii) any establishment of the Armed Forces or Central Para Military Forces;
 - (iii) any body or corporation owned or controlled by the Central Government;
 - (iv) the High Court of Kerala and other courts of law including Tribunals, and other organisations which have the status of Courts and whose proceedings are deemed to be judicial proceedings;
 - (v) the Secretariat of the Governor of Kerala;
 - (vi) all Local Self Government Institutions.
- (e) 'right to information' means right of access to information from any public authority,-
- (i) by obtaining certified copies of any records;
 - (ii) by obtaining diskettes, floppies or any other electronic mode or through print-outs where such information is stored in a computer or in any other device;
 - (iii) in such other manner as may be prescribed.
- (f) 'record' includes,-
- (i) any document, manuscript and file;
 - (ii) any microfilm, microfiche and facsimile copy of a document;
 - (iii) any reproduction of image or images embodied in such micro file (whether enlarged or not); and
 - (iv) any other material produced by a computer or by any other device.
- (g) 'trade secret' means information contained in a formula, pattern, compilation, programme, device, product, method, technique or process which is not generally known and which may have economic value.

3. Obligation of public authorities. - Every public authority shall,-

- (a) maintain all records in such manner and form as is consistent with its operational requirements duly catalogued and indexed;
- (b) publish at such intervals as may be prescribed,-
 - (i) the particulars of its organisation, functions and duties;
 - (ii) the powers and duties of officers and employees and the procedure followed by them in the decision making process;
 - (iii) the norms setup by the public authority for the discharge of its functions;
 - (iv) the details of facilities available to citizens for obtaining information;
- (c) publish all relevant facts concerning such of the important decisions and policies that affect the public, as maybe prescribed, while announcing such decisions and policies;
- (d) before sanctioning or initiating or causing to sanction or initiate any project scheme or activity, as may be specified by the State Government, publish or communicate to the public generally or to the persons affected or likely to be affected by the project, scheme or activity in particular in such manner, as may be prescribed, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of maintenance of democratic principles;
- (e) publish such other information as may be prescribed.

4. Right to Information.- (1) Subject to the provisions of this Act every citizen shall have the right to information.

- (2) Notwithstanding anything contained in sub-section (1), no person shall be given, -

- (a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India, or conduct of international relations;
- (b) information, the disclosure of which would prejudicially affect public safety and order or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case;
- (c) information relating to cabinet papers including records of the deliberations of the Council of ministers, Secretaries and other officers;
- (d) information, the disclosure of which would harm, frankness and candor of internal discussions including inter departmental or intra departmental notes, correspondence and papers containing advice or opinion of projections and assumptions relating to internal policy analysis;
- (e) information, the disclosure of which would prejudice the assessment or collection of any tax, cess, duty or fee or assist in avoidance or evasion of the tax, cess duty or fee;
- (f) information, the disclosure of which would constitute a breach of privilege of the Parliament or the State Legislature;
- (g) information regarding trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interest or the competitive position of a public authority or would cause unfair gain or loss to any person;
- (h) information regarding any matter which is likely to,-
 - (i) help or facilitate escape from legal custody or affect prison security; or
 - (ii) impede the process of investigation or apprehension or prosecution of offenders.

5. Procedure for supply of information. – (1) A person desirous to obtain information shall make an application to the competent authority in the prescribed manner, along with such fee, in such form and with such particulars, as may be prescribed:

Provided that the fee payable shall not exceed the actual cost of supplying information.

(2) On receipt of an application requesting for information, the competent authority shall consider it and except for justifiable reasons, pass orders thereon either granting or refusing it, as soon as practicable and in any case within thirty working days from the date of receipt of the application:

Provided that where the competent authority does not have the information he shall within fifteen days from date of receipt of application transfer the application to its next higher authority with whom such information is available and inform the applicant accordingly and thereafter such next higher authority to whom such application is transferred shall furnish information within thirty working days from the date of receipt of the application from the competent authority.

(3) Where a request is rejected under sub-section (2), the competent authority shall communicate, in writing, to the person making the request, -

- (i) the reasons for such rejection;
- (ii) the period within which the appeal against such rejection may be preferred;
- (iii) the particulars of the appellate authority.

6. Grounds for refusal to supply information in certain cases.- Without prejudice to the provisions of section 4, the competent authority may also reject a request for supply of information where such request, -

(a) is too general in nature and the information sought is of such nature that, it is not required to be ordinarily collected by the public authority:

Provided that where such request is rejected on the aforesaid ground, it shall be the duty of the competent authority to render help as far as possible to the person seeking information to reframe the request in such manner as may facilitate the supply of information;

(b) relates to information that is required by law, rules, regulations or orders to be published at a particular time; or

(c) relates to information that is contained in published material available to public:

(d) relates to personal information the disclosure of which has no relationship to any public activity or which would cause unwarranted invasion of the privacy of an individual except where larger public interest is served by disclosure:

Provided that the information relating to returns of assets and liabilities filed by any Government servant shall be made available to the public under such circumstances as may be prescribed.

7. Appeals. – (1) Subject to such rules as may be prescribed, any person,-

(i) aggrieved by an order of the competent authority may, within thirty days from the date of receipt of such order; or

(ii) who has not received any communication within a period of thirty working days from the date of making application under section 5, may within next thirty days after such period;

appeal to such authority as may be prescribed:

Provided that no appeal shall lie against an order of withholding of information under clause (f) of sub-section (2) of section 4.

(2)The appellate authority may, after giving the person affected a reasonable opportunity of being heard, pass such order as it deems fit.

(3) The decision of the appellate authority shall be final.

(4)Appeals referred to in sub-sections (1) shall be disposed of within thirty days from the date of receipt of such appeals.

8. Power to remove difficulties. - If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, make such provisions not inconsistent with the provisions of this Act and appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

9. **Protection of action taken in good faith.** - No suit, prosecution or other legal proceedings, shall lie against the Government or any public authority or any person for anything which is done in good faith or intended to be done, under or in pursuance of this Act or rules made there under.

10. **Penalties.** - Where any competent authority, without any reasonable cause, fails to supply information sought for within the period specified under section 5 or furnishes information which is false with regard to any material particulars and which he knows or has reasonable cause to believe it to be false, -

(i) the authority superior to the competent authority may impose a penalty not exceeding two thousand rupees on such competent authority as it thinks appropriate after giving him a reasonable opportunity of being heard and such a penalty shall be recoverable from his salary or if no salary is drawn, as arrears of public revenue due on land; and

(ii) he shall also be liable to disciplinary action under the service rules applicable to him.

11. **State Council for Right to Information.** - (1) The Government shall, by notification in the Gazette, establish with effect from such date as may be specified in the notification, a council to be known as State Council for Right to Information.

(2) The State Council shall consist of the following members namely: -

(a) the Minister-in-charge of the Department of Administrative Reforms in the Government who shall be its chairman; and

(b)(i) such other official members not exceeding four ;

(ii) non-official members not exceeding four representing journalists, non Government organisations;

(3) the time and place of the meeting of the State Council shall be decided by the Chairman and shall observe such procedure, as may be laid down by the council to transact its business.

(4) The function of the State Council shall be to promote right to information in the state and to deal with all matters relating to right to information, such as, -

(a) review the operation of the Act and the rules made there under

(b) review of the administrative arrangements and procedures to secure for citizens the fullest possible access to information;

(c) research and documentation as regards management of information with a view to improve the extent and accuracy of information being made available under the Act; and

(d) to advise the Government on all matters relating to right to information, including training, development and orientation of employees to bring in a culture of openness and transparency.

12. **Overriding effect of Act.** - The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or may instrument having effect by virtue of any law other than this Act.

13. **Power to make rules.** - (1) The Government may, after previous publication, by notification, make rules to carrying out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) the fee payable under section 5;
- (b) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so whoever, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Right of access to information to the citizens of the State promotes openness, transparency and accountability in the administration and ensures effective participation of people in the administration and makes democracy meaningful. Therefore, it is proposed to direct all public authorities inter alia to publish periodically the details of facilities available to citizens and announce the details of schemes, projects etc. before its implementation and also supply of information as and when a request to that effect is made by a citizen.

2. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted, and brought into operation, would not involve any additional expenditure from the consolidated fund of the State.

MEMORANDUM REGARDING DELEGATION LEGISLATION

1. Sub-clause (2) of clause 1 of the Bill seeks to empower the Government to notify the data of commencement the Act.

2. Sub-clause (a) of clause 2 of the Bill seeks to empower the Government to appoint any authority or officer or person to be competent authority for the purposes of the Act.

3. Sub-clause (e) of clause 2 of the Bill seeks to empower the Government to prescribe the manner of obtaining certified copies, floppies etc.

4. Sub-clause (d) and (c) of clause 3 of the Bill seeks to empower the Government to specify the scheme or activity and such other information that may be published.

5. Sub-clause (1) of clause 5 of the Bill seeks to empower the Government to prescribe the manner of making application, fee, form and other particular.

6. Clause 8 of the Bill seeks to empower the Government by order make provisions for removing any difficulty when arises in giving effect to the provisions of the Act.

7. The matter in respect of which rules may be made or orders may be issued are matters of procedure or details and are of routine and administrative nature. Further, every rule made under this Act are subject to scrutiny by the legislative assembly. The delegation of legislative power, is their of a normal character.